IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.376 OF 2005
IN
APPEAL FROM ORDER NO.1110 OF 2004

Mulji Chandan & Ors. ...Applicants
vs.
Anjanikumar Co.(Pvt) Ltd. & Ors. ...Respondents

CORAM: A.S.OKA,J.
DATE : APRIL 26,2005.

P.C.:

1. Heard Counsel appearing for the parties. Appeal from Order is already admitted for final hearing. The operative part of the impugned Judgment and order read thus :

"1. Notice of Motion No.3318 of 2004 moved by the Plaintiff is allowed as under :

(a) The Defendant shall allow access/user to individual Plaintiff or the Plaintiffs in relation to 15 ft. access and also user of lawn shown as 24 ft. in the plan which is part of the agreement.

(b) This user/access can also be used by the Defendant No.1. However, Defendant No.1 will see to it this is not blocked in entirety to be used by the Plaintiff.

(c) The Defendant No.1 is at liberty to carry on construction activities as per sanctioned plan, save and except carrying any construction work in relation to access 15 ft. and the lawn 24 ft. which is part of the agreement.

(d) The Defendant shall not demolish Gala No.15

belonging to the Plaintiff No.13 till disposal of the suit..."

2. During the pendency of the Notice of Motion there was an ad-interim order passed by the learned Trial Judge on 23rd August 2004 which read thus :

"PC: The parties cannot travel beyond the agreement or plan of property (Exh.B) which provide lawn to be 24 ft. in width while access of 16 ft. in width, which the Defendant No.1 during the process of development are bound to adhere...."

3. Thus, it appears that from 23rd August 2004 the access road having width of 15 feet and lawn having width of 24 feet has been protected by the learned Trial Judge. The learned Counsel for the Applicants/Appellants has placed reliance on the sketch annexed to the compilation of Appeal which shows that the lawn which is the subject matter of the impugned order is in between the access road and the galas of the Applicants. There are various prayers made in this Civil Application. Prayer (a) is regarding preventing the Respondent No.1 from carrying out any construction of buildings by using the Petitioners' access and part of their plot at Anjanikumar Industrial Estate. Prayer (b) is for directing the Respondent No.1 to repair the road in front of the Petitioners' unit. Prayer (c) is made for permission to

carry out repairs to the road in case the Respondent No.1 is not in a position to repair the road.

4. Shri Sakhardande appearing for the Applicants states that without prejudice to their rights and contentions in the pending Appeal and pending suit, the Appellants are ready and willing to carry out the repairs to the access road having width of 15 feet in respect of which injunction has been granted by the impugned order at their costs without claiming any equity and subject to final order which may be passed in the Appeal. He states that the Appellants will not claim the amount spent by them on carrying out the repairs to the road from the Respondent No.1. He states that the portion of land which is designated as a lawn in respect of which order of temporary injunction is passed will not be used by the Appellants for any purpose save and except by way of access to their respective galas and for the purpose of transporting the goods from their respective galas to the access road and vice versa. The statements made by Shri Sakhardande on the instructions of the Applicants are accepted. The Applicants are directed to file written undertakings in terms of the said statements within a period of two weeks from today.

5. The Appeal is pending for final hearing. Interim order granted in favour of the Applicants is operating from August 2004.

6. In view of the undertakings which are recorded above, no prejudice will be caused to the Respondent No.1 or any other Respondents if permission is granted to the Applicants to repair the road without claiming any equity.

8. Hence, I pass the following order :

i) The Applicants are permitted to carry out repairs to access road having width of 15 feet at their own costs without claiming any equity. The Applicants will be permitted to carry out repairs only after undertakings in writing are filed in terms of the statements made by Shri Sakhardande, learned Counsel for the Applicants which are accepted. If undertakings are not filed within a period of two weeks from today, this Application will stand rejected without further reference to the Court.

ii) It is made clear that this interim arrangement is made without prejudice to the rights and contentions of both the parties in the pending Appeal.

iii) Parties to act upon an authenticated copy of this order.

JUDGE.